IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.12.2007

Coram:
The Honourable Mr. Justice V. DHANAPALAN

W.P. No.4960 of 1998 & W.PM.P. No.7684 of 1998

Ponnusamy Chettiar — Petitioner

vs.

1 The Special Tahsildar
Adi Dravidar Welfare and
Land Acquisition
Tirupathur

2 The Collector
Vellore District — Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus as stated therein.

For petitioner — Mr. M.S. Subramanian
For respondents — Mr. B.K. Girish Neelakantan
Government Advocate

ORDER

This writ petition has been filed seeking to call for the records from the office of the first respondent pertaining to the acquisition of the petitioner's lands in S.No.110/2 measuring 1.50 acres in Valayampattu Village, Vaniyambadi Taluk, Vellore District which is sought to be acquired under a notification under Section 4 (1) of Act 31 of 1978 published in the North Arcot Ambedkar District Gazette dated 03.01.1997 and quash the same.

2. The land in new Survey No.110/2 in No.92, Valayampattu Village, Vaniyambadi Taluk, now Vellore District, which presently belongs to the petitioner, his two brothers and five sisters, originally belonged to his mother in whose name the patta stood till about 1986. After his mother's demise intestate, the petitioner, his brothers and sisters inherited the property and are entitled to 1/8th share each and patta stood transferred to the petitioner's individual name in Patta No.315. There are about 100 coconut trees in the land in question each yielding about 100 coconuts in a year.

3. On 23.03.1998, upon enquiry, the petitioner came to know from the Village Administrative Officer that a part of his lands was

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sought to be acquired for providing house sites to Arunthathiyars under the Harijan Welfare Scheme by invoking the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 ("the Act" for short). He further came to know that a Notification was issued in the North Arcot-Ambedkar District Gazette dated 03.01.1997 under Section 4(1) of the Act, proposing to acquire his land to the extent of 1.50 acres out of 3.73 acres and this Gazette Notification is impugned in this writ petition.

4. According to the petitioner, as per Section 4(2) of the Act, before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised, may be interested in such land, to show cause as to why it should not be acquired and in the instant case, no such notice show cause notice was issued to him.

5. It is also the petitioner's case that according to Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 ("the Rules" for short), the District Collector shall serve a show cause notice in Form I under sub-section (2) of Section 4 individually on the owner or all persons interested in the land to be acquired and if the owner or the other person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by Registered Post (Acknowledgment Due) to the last known address of the owner or any other person interested and this procedure has not been adhered to in his case though he and his brothers have been residing in the same address for the last several years and as such, the acquisition proceedings are vitiated by procedural irregularity.

6. In short, the petitioner's case is that issuance of Notificiation in the District Gazette which is impugned in this writ petition, without issuance of a show cause notice, is in violation of the statutory requirement and as such, it is invalid, inoperative and ineffective.

7. The first respondent has filed counter contending that:

a. a notice dated 28.08.1996 in Form I was issued to the petitioner asking him to appear for an enquiry on 16.09.1996 to show cause as to why his land should not be acquired for providing house sites to the poor Arunthathiyars of Valayampattu Village under the Harijan Welfare Scheme and since he refused to accept the same, it was served by way of affixture and he neither appeared in person nor sent his objection in writing to the proposed acquisition and hence, he concluded that the

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petitioner did not have any objection to the proposed acquisition and proceeded with the land acquisition proceedings;

b. the District Collector, after perusal of the 4(1) proposal submitted by the first respondent, approved the same, thereby ordering for publication of Notification in the North Arcot District Gazette and accordingly, the Notification came to be published in the Vellore District Gazette on 03.01.1997 and the locality publication was made on 06.01.1997; and

c. pursuant to the above proceedings, sub-division records were prepared and the land value of Rs.80,000/- per acre was arrived at with reference to sales statistics gathered for one year from the Sub-Registrar's Office, Vaniyambadi i.e. from 01.01.1996 to 31.12.1996 and then, the Form III notice under Section 12(1) of the Act was issued asking the petitioner to appear for enquiry on 10.04.1997 and since the petitioner refused to receive the notice, it was served by way of affixture as per rules and yet, he did not turn up for enquiry on 10.04.1997 and an award was passed and a layout was prepared for issuing patta to 34 beneficiaries and it was submitted to the second respondent for his approval and at this stage, this writ petition has been filed by the petitioner.

8. Heard Mr. M.S. Subramanian, learned counsel for the petitioner and Mr. B.K. Girish Neelakantan, learned Government Advocate appearing for the respondents.

9. The main contention put forth by the learned counsel for the petitioner is that the action of the first respondent in issuing the Notification in the North Arcot Ambedkar District Gazette dated 03.01.1997 without issuance of show- cause notice as mandated under 4 (2) of the Act makes the Notification itself invalid, inoperative and ineffective inasmuch as it is in violation of the aforesaid statutory requirement.

10. In support of his contentions, the learned counsel for the petitioner has relied on:

i. a judgment of this Court in the case of N. Loganathan vs. The Special Tahsildar, A.D.W., Tiruvellore reported in 1996 WLR 28 (paras 4A and 5)

"Under the Act 31 of 1978, the one and the only opportunity given to the land owner or a person interested is on the issue of the show cause notice under S.4(2) of the Act. The Act being expropriatory in nature and having regard to the rigour of its provisions, the opportunity to show cause why the land should not be

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acquired should be given as it is a statutory requirement and the compliance thereof has, therefore, to be strictly adhered to.

As rightly pointed out by the learned counsel for the petitioner, the show cause notice required to be issued under S.4(2) read with R.3 is mandatory and therefore should be strictly complied with. R.3 as stated already requires individual notice to be served and every attempt has to be made to serve the show cause notice individually on the owner or the person interested and if for any reason, individual notice could not be served as the person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member is found, notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business."

ii another judgment of this Court reported in 2003-3-L.W.31 S.N. in the matter of St. Paul's Seminary College Society represented by its President, Fr. Francis Nallappan, Karayanchavadi, Poonamallee, Chennai - 56 vs. The Collector, Tiruvallur District and another (para 10)

"In proceedings relating to Act 31 of 1978, this Court has been repeatedly pointing out that the provisions of the Act have to be strictly complied with, considering the drastic and summary nature of the provisions of the Act and if the Government wants to make use of such provisions. It is expected of the officials to discharge their duties in a proper manner and not to reduce the requirements into empty formalities.

The printed format which has been used by the Collector is very unfortunate and cannot be sustained. In spite of the High Court repeatedly pointing out that such orders cannot be passed, the same mistake is being repeated again and again. In fact, in the earlier cases, this Court had set aside the orders on the ground that they were cyclostyled. In the impugned order, it has become still worse viz., the very cyclostyled orders are now being issued in printed formats."

iii yet another judgment of this Court reported in 2003 (1) CTC 449 in the case of Immaculate Heart of Mary Society, Pudupalayam vs. The Special Tahsildar, Adi Dravidar Welfare, Sivaganga Pasumpon Devar District (para 8)

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"The next question is whether there is any flaw in the acquisition proceedings initiated by the authorities. The acquired extent is 2.60 acres. While it is the case of the petitioner that the same is comprised in two survey numbers viz., S.No.444/4 and 445/1, originally owned by Arockiasamy and Fr. Sebastian, the case of the respondents as reflected from Section 4(1) notification and counter affidavit is that the extent is sold by Arockiasamy. In fact, a specific stand is taken in the counter affidavit that in the revenue records, nothing is shown as regards the title of Sebastian in respect of the lands to be acquired.

. . .

Village records cannot prove title to the property, but would only show, as per the revenue records who is the owner. This Court does not know as to what prevented the authorities from calling for the details from the petitioner or further probing into the matter. At the risk of repetition, it has to be pointed out that (a) Fr. Sebastian also filed writ petition earlier, (b) the order in writ petition does not mention as if Sebastian had no interest in the property proposed to be acquired, and (c) at the enquiry, Arockiasamy informed the authorities that he sold only his one acre to the petitioner. By some more probing into the matter, the authorities could have certainly found out the complete and correct facts. As already mentioned they have to remember that the property of a citizen is being compulsorily snatched and the citizen is not before them with a begging bowl. The Officer, who conducted the enquiry has failed to discharge his duties in a diligent manner and in the interest of the public at large."

iv one another judgment of this Court reported in 2000-3-LW-517 in the matter of T.M. Lakshmiah v. The Collector of Dharmapuri District, Dharmapuri and another: (para 8)

"Here, we find that 4(1) notice has not been served upon the petitioner individually. It is simply stated that notices were refused by the parties concerned and therefore, they were affixed. There is no provision for service by affixture. The Act is expropriatory. The land of an individual is sought to be acquired by the Government. When it is so, all procedural precautions must be strictly adhered to. There is nothing on record to show that any attempt was made to serve the notice, individually. There is neither any affidavit by the

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person who was entrusted to serve the notice nor any statement from the alleged witnesses to show that there was an attempt to effect service personally and there was a refusal on the part of the individuals concerned. There is no attempt to serve by Registered Post."

11. The learned Government Advocate, per contra, rebutting the contention of the learned counsel for the petitioner, contended that a notice dated 28.08.1996 in Form I was issued to the petitioner to show cause as to why his land should not be acquired and the same was refused to be received by him and hence, it was served by way of affixture and the petitioner neither appeared in person nor sent his objection and subsequently, Form III notice under Section 12(1) was also issued on 27.03.1997 which was also refused to be received by the petitioner and this being the case, the contention of the counsel for the petitioner that no show cause notice was issued to the petitioner before publication of the impugned Notification in the District Gazette does not have legs to stand. He has further contended that since the award had already been passed, possession taken and layout also prepared, the prayer sought in the writ petition is illegal.

12. I have given heedful thought to the submissions made by the learned counsel on either side and have also given due consideration to the judgments relied on by the learned counsel for the petitioner.

13. From a perusal of the records, it is seen that the respondents initiated proceedings for acquisition of petitioner's land after the verification of availability of poromboke land and suitability of other patta lands in the vicinity under the Act and thereafter, proposed to acquire the land in S. No.110/2 classified as Government dry land to the total extent of 0.48.0 hect. out of the total extent of 1.35.0 hect. at Valayampattu village in Vaniyambadi Taluk, Vellore District; the Land Acquisition Officer accordingly issued Notice in Form I to the petitioner asking him to appear on 28.08.1996 for enquiry on 16.09.1996 to show cause as to why his land should not be acquired for providing housesites to the poor Arunthathiyars of the Valayampattu village; the petitioner has neither appeared for the enquiry nor sent his objections in writing to the proposed acquisition by the Land Acquisition Officer which made the Land Acquisition Officer come to the conclusion that there are no objections to the proposed acquisition and proceed with the land acquisition work.

14. It is also seen that after perusal of the 4(1) Notification proposal submitted by the first respondent, the second respondent approved the same thereby ordering publication of the Notification in the District Gazette and accordingly, it was published in the Vellore District Gazette on 03.01.1997 and locality publication was also made

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on 06.01.1997; subsequent thereto, necessary sub-division records were prepared and got scrutinised and the land value was arrived at with reference to the sales statistics and fixed at Rs.80,000/- per acre and Form III notice of enquiry was issued on 27.03.1997 and since the same was refused to be received by the petitioner, it was served by way of affixture on 30.08.1996 as per rules; thereafter, the award was passed by the Land Acquisition Officer in Award No.22/96-97 dated 27.03.1997 and as per the procedure contemplated, 12(1) notice was issued on the petitioner on 27.03.1997 asking him to appear before the first respondent on 10.04.1997 and even on this occasion, the petitioner did not turn up for making future payment as and when he required payment; hence, after making necessary changes in the village Taluk accounts, possession of the acquired land was taken on 23.04.1997 and a layout was prepared for issuing patta to 34 beneficiaries and the same were submitted to the Collector for approval.

15. From the series of events discussed above, it is apparently seen that the procedure contemplated under the Act and the Rules were scrupulously followed by the respondents and as such, there is no procedural irregularity in the acquisition proceedings of the respondents and at the above stage, the petitioner filed this writ petition and this Court also granted an order of interim injunction on 03.04.1998 which was subsequently modified as an order of status quo on 28.08.2003.

16. Yet another important aspect involved in this case is that when the award came to be passed on 27.03.1997 and possession also taken, the petitioner has approached this Court only on 03.04.1998, i.e. after a lapse of over a year. In this regard, it would be quite relevant to observe that the proposition that those land acquisition matters which have obtained finality should not be reopened is settled in a Constitution Bench judgment of the Supreme Court reported in (2002) 3 SCC 533 in the case of Padma Sundara Rao (dead) and others vs. State of Tamil Nadu and others and the same is the stand taken by the Supreme Court in its judgment reported in (2003) 4 SCC 485 in the matter of Tej Kaur v. State of Punjab and this has also been followed by a First Bench of this Court in the decision reported in 2005 (3) CTC 691 in the case of S.Harshavardhan and another v. State of Tamil Nadu, represented by the Secretary to Government, Industry Department, Fort St. George, Chennai-600 009 and the relevant paragraph runs thus:

> "3. It has been repeatedly held by the Supreme Court in Tej Kaur v. State of Punjab, 2003 (4) SCC 485 that writ petition challenging the land acquisition proceedings should not be entertained after the award has been passed. In that case, the award was passed on 15.03.1994 whereas the writ petition was filed on

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12.04.1994 i.e. After the award was given. Hence, the writ petition was dismissed as belated. Similarly in Municipal Council, Ahmednagar v. Shah Hyder Beig, AIR 2000 SC 671, the Supreme Court observed vide paragraph 17:

> "In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder."

. . . Hence, without going into the merits of the case, we are of the opinion that the writ petition was rightly dismissed on the ground of laches. . . ."

17. Last but not the least, it is to be borne in mind that the Act has been enacted for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular, Article 46 of the Constitution of India aimed at bringing the under-privileged to the main stream of life in order to achieve egalitarian order of the society and the main policy of acquiring lands is to assign such lands to them.

18. Therefore, in view of the decision of the Constitution Bench judgment of the Supreme Court and yet another judgment of the Supreme Court followed by a First Bench of this Court, all referred to above, holding that once finality is reached in the land acquisition proceedings, they should not be reopened inasmuch as the acquisition is meant for a public purpose, I am of the considered view that there is no scope to interfere with the impugned Gazette Notification dated 03.01.1997 and it is accordingly upheld.

Resultantly, the writ petition is dismissed without any order as to costs and consequently, the connected W.P.M.P. is closed.

cad

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1 The Special Tahsildar
Adi Dravidar Welfare and Land Acquisition
Tirupathur

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2 The Collector
Vellore District

- One cc to Mr. M.s. Subramanian, Advocte sR 73965
- One cc to Govt Pleader SR 74353
- KU (co)

sg 08/1/08

order in
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